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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-218316.2

DATE: April 10, 1985

MATTER OF: Johnson Controls, Inc.

## DIGEST:

1. Protest against alleged defective specifications contained in step one request for proposals of two-step formally advertised procurement filed after closing date for receipt of initial step one technical proposals is untimely.
2. Protest alleging that evaluation under agency interpretation of solicitation specifications violates provisions of Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, 98 Stat. 1175, July 18, 1984, is dismissed for failure to state a valid basis of protest because CICA provisions cited by protester are not applicable to solicitation issued prior to CICA's effective date.

Johnson Controls, Inc. (JCI), protests the Department of the Navy (Navy) rejection of JCI's proposal as technically unacceptable under step one request for proposals (RFP) N62467-84-R-0332 of a two-step formally advertised procurement for an energy monitoring and control system (EMCS).

JCI contends that, although its proposed system does not meet the design and construction specifications called for in the RFP, its system meets or exceeds all relevant performance capabilities of an EMCS and thus its system would meet the Navy's performance needs. JCI asserts that the Navy's evaluation, which allegedly only considered JCI's failure to meet the solicitation's design and construction specifications without consideration of the capacity of JCI's product to satisfy agency performance needs, is improper and violates the Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, 98 Stat. 1175, July 18, 1984. JCI specifically argues that the Navy's rigid adherence to the solicitation specifications violates section 2721 of CICA, supra (to be codified at 10 U.S.C. § 2301(b)(6) and (7)), by precluding the proposing of functional cost effective EMCS systems and failing to "promote the use of

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commercial products whenever practicable." Finally, JCI alleges that the Navy specifications contain system design requirements which exceed the government's needs.

We dismiss the protest.

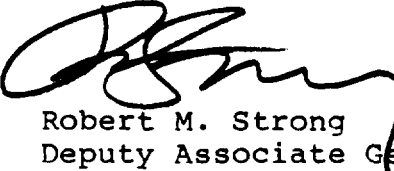
Initially, to the extent JCI's protest is against the specifications, for example, that the specifications do not reflect the agency's minimum needs, this protest allegation is untimely and will not be considered on the merits. Under section 21.2(a)(1) of our Bid Protest Regulations, protests against specification improprieties apparent from the face of the step one solicitation must be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1)) (1985); See Birdsboro Corp., B-218100, Feb. 11, 1985, 85-1 C.P.D. ¶ 180. The closing date for receipt of initial proposals was prior to January 30, 1985, but JCI did not file a protest against the specifications until April 1, 1985.

JCI's allegation that the Navy's evaluation of JCI's proposal in accordance with the stated solicitation design specifications violates CICA fails to state a valid basis of protest and is dismissed under section 21.3(f), of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)) (1985). The provisions of CICA, concerning the drafting of specifications which JCI alleges the Navy violated, are not applicable to this procurement.

Section 2751(a) of CICA provides that with regard to CICA provisions other than those relating to the filing of bid protests against procurement actions,

" . . . this title shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985."

Thus, the CICA provisions referred to by JCI are not applicable to this solicitation which was issued before the effective date of April 1, 1985.



Robert M. Strong  
Deputy Associate General Counsel